83-167

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1982

NO:

PAULA E. PFISTER,

Petitioner

v.

AMERICAN AIRLINES, INC., a Corporation,

and

BARBARA BAUER (Stewardess Supervisor and Employee of AMERICAN AIRLINES, INC.)

IRVING CURHAN (Director of Flight Service and Employee of AMERICAN AIRLINES, INC.

AIRLINE STEWARDS AND STEWARDESSES ASSOCIATION,

TRANSPORT WORKERS UNION LOCAL 550/552, AFL-CIO,

HONORABLE MANUEL REAL, JUDGE OF THE U. S. DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA,

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT,

Respondents.

PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT AND/OR PETITION FOR WRITS OF MANDAMUS/PROHIBITION OR THE LIKE DIRECTED TO SAID COURT OF APPEALS AND U. S. DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA.

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QUESTIONS PRESENTED FOR REVIEW:

1. Under the Railway Labor Act is a district court justified in its refusal to extend jurisdiction to an aggrieved employee's claim against her employer for wrongful discharge and against union for its complicitous and willful breach of its duty of fair representation obstructing Petitioner's arbitral procedures to vindicate her grievance?

2. Is a district court justified in applying or borrowing a state statute of limitations to federal claims presented by Petitioner under the Railway Labor Act where said Act contains no express limitation of action provision, and if so, was the district court's FAILURE to make not only a correct and proper characterization of Petitioner's claims but to identify specifically what statute of limitation action provision of which state applied to Pfister's claims violative of the purposes and policies of the federal statute and federal rights relied upon by Petitioner?

QUESTIONS PRESENTED (con't.)

3. Is Petitioner's Fifth Amendment due process right irreparably abridged by the gross procedural irregularities committed by the district court and court of appeals in the conduct of her litigation which departures include the conscious destruction of tape transcript evidence presented at the time of oral hearing by Petitioner to the appellate panel and a refusal to permit Petitioner a short continuance to have legal counsel represent her at the oral hearing when her retained counsel was improperly prevented from doing so?

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Reasons for Granting Writs :

I. PETITIONER SUFFICIENTLY INVOKED FEDERAL QUESTION JURISDICTION OF THE DISTRICT COURT UNDER THE RAILWAY LABOR ACT WHERE SHE SUED HER EMPLOYER AND UNION IN A SINGLE ACTION SEEKING TO ADJUDICATE ALL CLAIMS INCLUDING WRONGFUL DISCHARGE WHERE THE ARBITRAL PROCEDURES THROUGH WHICH SHE WAS TO VINDICATE HER GRIEVANCE WERE FLAWED BY THE UNION'S BREACH OF ITS DUTY OF FAIR REPRESENTATION SOLICITED BY HER EMPLOYER. 43

Reasons for Granting Writs: con't.

II. ABSENT AN EXPRESS LIMITATION OF ACTION PROVISION CONTAINED IN THE FEDERAL STATUTE SUED UNDER, THE DISTRICT COURT WAS OBLIGED TO APPLY CALIFORNIA CODE OF CIVIL PROCEDURE SEC. 338(4) CONCERNING AN ACTION BASED UPON FRAUD TO PFISTER'S COMPLAINT WITH SPECIAL ATTENTION GIVEN TO THE DISCOVERY OF THE FRAUD AS ALLEGED BY PFISTER AND THE CONCEALMENT OF SAID CAUSES OF ACTION FROM HER OR IN THE ALTERNATIVE TO APPLY CPLR OF NEW YORK, SEC. 213(1) AND (8) CONCERNING ACTIONS BASED UPON CONTRACT OR FRAUD 54

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OPINIONS BELOW

The subject Orders entered by the District Court forming the basis of the within Petition and, in particular, that Order entered by the District Court sitting as Manuel Real on June 10, 1981, dismissing Petitioner's Complaint and that Order of the District Court sitting as Malcolm M. Lucas, denying Petitioner's Motion to Disqualify District Judge Manuel Real entered June 8, 1981 is unreported at this time.

The U. S. Court of Appeals for the Ninth Circuit Order affirming the decision of the District Court dismissing Petitioner's Complaint filed January 5, 1983 and its Order denying Petitioner's Petition for Rehearing and Suggestion for Rehearing, en banc, filed May 16, 1983 are also unreported at this time.

The subject Orders of the District Court aforementioned above are denominated as Appendix A and Appendix B respectively. The Orders of the U. S. Court of Appeals hereinabove referenced are denominated and appear

as Appendix C and Appendix D.

STATEMENT OF JURISDICTION

Jurisdiction for this Court to grant Petitioner relief for certiorari and to grant the extraordinary relief for mandamus or prohibition also sought is conferred pursuant to Rules 21 and 27 of the Rules of Court and Title 28 of the United States Code Section 1651, The All Writs Act.

Petitioner is seeking review of district court orders entered June 10, 1981 dismissing her Complaint (APPENDIX A) and filed June 8, 1981 denying her Motion to preemptorily disqualify the district court Manuel Real for bias and prejudice against her and in favor of Respondents, Real Parties in Interest (APPENDIX B).

Petitioner also seeks review of the U. S. Court of Appeals affirming the dismissal of Petitioner's Complaint filed January 5, 1983 (APPENDIX C) and the Order denying Petitioner's

Petitioner for Rehearing and Suggestion for Rehearing, En Banc (APPENDIX D).

Petitioner's Application for Stay of Mandate of the U. S. Court of Appeals was granted by the Honorable U. S. Circuit Judge Proctor Hug, Jr. notwithstanding objections of Respondents (Real Parties in Interest), said Order was filed on June 10, 1983 granting Petitioner's Motion for Stay up and through June 16, 1983 as more fully appears as APPENDIX E.

Petitioner's Application to Stay the Mandate of the U. S. Court of Appeals made pursuant to 28 U.S.C. Section 2101 and Rule 41 of the Federal Rules of Appellate Procedure was granted unanimously by the appellate panel who affirmed the dismissal of the district court, more fully denominated as Circuit Judges Goodwin, Hug and Boochever. The subject panel has ordered the mandate further stayed up and through July 30, 1983

as more fully appears at APPENDIX F.

STATUTES INVOLVED

This case involves application of the Railway Labor Act, 45 U.S.C. Section 151 made applicable to airlines by virtue of the provisions of 45 U.S.C. Section 181, et seq. This case further involves the federal statute contained in 28 U.S.C. Sections 1331 and 1337. Statutes are set out in the appendix as APPENDIX G.

This case also involves the application of the State of California's statute of limitation provision, more fully denominated as the California Code of Civil Procedure Section 338, New York's CPLR Statute, Sec. 213, is also set out at APPENDIX G.

CONSTITUTIONAL PROVISIONS

This case involves the Fifth Amendment to the U. S. Constitution, hereinafter referred to as the due process clause, more completely

identified as APPENDIX H and which pertinent provisions provide that "no person shall be ... deprived of life, liberty or property without due process of law..."

STATEMENT OF THE CASE

Petitioner herein, PAULA E. PFISTER, commenced suit against her former employer, Respondent AMERICAN AIRLINES (hereinafter "American"), and various individual respondents employed by AMERICAN and against her Union, Respondent AIR LINE STEWARDS AND STEWARDESSES ASSOCIATION and Respondent TRANSPORT WORKERS UNION LOCAL 550/552, AFL-CIO (hereinafter Respondent "Union") in the U. S. District Court for the Central District of California for violations of the Collective Bargaining Agreement growing out of Respondent AMERICAN's willful and bad faith termination of Petitioner for taking her aged mother on her first airline trip and for having conspired and colluded with Respondent UNION to improperly thwart

the vindication of Petitioner's grievance through the arbitral machinery mandated by the Railway Labor Act, 45 U.S.C. Section 151, et seq. PFISTER commenced said suit in November 1978 shortly after her discovery of the causes of action which are alleged to have been willfully withheld from her by Respondents acting in conspiracy one with another.

PFISTER further asserts that Respondent AMERICAN solicited and enticed Respondent UNION to breach its statutory duty of fair representation owed to PFISTER and to otherwise repudiate the covenant of good faith and fair dealing contemplated by the fiduciary relationship existing between Petitioner and Respondent UNION and undertook said acts with an intention to cause Petitioner maximum harm, oppression and duress and that they acted in a fraudulent common enterprise to force and induce Petitioner into signing a false and sham settlement agreement effectively aborting Petitioner's

grievance and otherwise calculated to disenfranchise Petitioner of her rights available under the collective bargaining agreement in effect, the Railway Labor Act, and other applicable federal statutes. Petitioner further complains that the fraud and deceit practiced by Respondents acting in combination one with another prevented her from discovering the causes of action asserted in her Complaint.

PFISTER asserts that the Respondent UNION willfully abandoned her grievance for wrongful discharge AFTER they had docketed her cause with the System Board of Adjustment located at: AMERICAN AIRLINES Corporate Headquarters whose address was 633 Third Avenue, New York, New York 10017. Said scuttling of Pfister's representation before the Board was instigated by Respondent AMERICAN with full knowledge by Respondents, both American and UNION, that said acts would have the effect, and did in fact have the effect, of placing PFISTER in a condition of duress and helplessness and otherwise

enabled said Respondents to coerce PFISTER into signing a "sham settlement agreement", wholly wanting in consideration and which otherwise disenfranchised her from all federal rights under the Agreement and under the Act.

That Pfister entered said fraudulent settlement agreement as a direct result of the fraudulent representations of Respondent AMERICAN as were fully set out in her amended complaints and as a result of the UNION's willful and intentional actions in having misrepresented to Petitioner the various nature of her rights under federal law and the collective bargaining agreement in effect, and but for said gross misconduct of Respondents acting in conspiracy and collusion one with another, she would not have executed said agreement extinquishing her grievance before the Board and other federal rights.

Evidence was adduced at the California Unemployment Insurance Appeals Board where Respondent AMERICAN sought to deny PFISTER benefits that Pfister "did NOT intentionally breach a duty owed to her Employer (AMERICAN) nor act in wanton disregard of that duty ... and the Referee (ALJ) finds 'that the claimant was not discharged for misconduct within the meaning of Section 1256 of the California Unemployment Insurance Code!"

PFISTER asserts that the absolution by the California Appeals Board constitutes prima facie evidence that Respondent AMERICAN discharged her in bad faith, thereby breaching the Collective Bargaining Agreement, per se. Further, Respondent UNION, when this evidence was 'bared' and at all material times thereafter, had an affirmative continuing obligation and duty to zealously process her claim before the Systems Board of Adjustment, to fully apprise

her of all of her rights under the Agreement and the Act, to refrain from conduct which was fraudlent and oppressive, to act in a manner which would not compromise the rights or interests of Petitioner, and to otherwise enforce the obligations and terms of the Collective Bargaining Agreement. PFISTER avers that Respondent UNION willfully, wantonly, and with malice of forethought and at the solicitation of Respondent AMERICAN violated not one, but each and every of these affirmative obligations owed to her as part and parcel of their Duty of Fair Representation. PFISTER also complains that Respondent UNION withheld and 'concealed' the disclosure of relevant information, documents, and materials pertaining to her rights and otherwise consciously failed to make a full and complete disclosure to her requisite for the discharge of their Fiduciary duties. Respondent UNION by engaging in said conduct,

not only participated with Respondent AMERICAN, in defrauding PFISTER of her federal claims and collectively-bargained rights, but they are actively alleged to have concealed information from her and made misrepresentations to her in said fiduciary capacity which had the effect of inducing Petitioner to consummate and complete said sham settlement agreement, which in the absence of said fiduciary misconduct by the UNION, she would not have signed.

PFISTER, whose employment commenced in New York and whose Employer and collective bargaining agent were also domiciled and headquartered in New York and whose employment responsibilities were primarily discharged in New York was wrongfully and maliciously discharged in violation of the Collective Bargaining Agreement which was completed in New York City and otherwise administered there. All of the negotiations and deliberations regarding PFISTER's grievance

were initiated and carried out from New York and PFISTER was solicited by Respondent AMERICAN and Respondent UNION acting in fraud and conspiracy one with another to fly to New York City to the Dryden East Hotel, located on 42nd Street in Manhattan to seek to force PFISTER to involuntarily resign and otherwise 'forfeit all of her rights under collective bargaining and relevant federal statutes'. When PFISTER adamantly refused, Respondent UNION willfully and intentionally, and at the instruction of Respondent AMERICAN (pulled out) and withdrew all legal representation and financial support of PFISTER before she ever had an opportunity to have a hearing or otherwise proceed before the Board in New York City. PFISTER alleges that said actions, in combinations with other acts of intimidation, threats and oppression by the UNION in severing all legal, financial

and moral support of her claim which were performed and committed in New York City, not only placed her in a condition of severe duress and vulnerability, but also substantially traumatized her and left her 'defenseless' and otherwise totally uninformed of her rights and standing under the Agreement and federal law. Further, said acts, PFISTER continues, were done with a malice of forethought so that she would never be able to properly vindicate her bad faith discharge nor otherwise be accorded reinstatement and back pay to which she was justly entitled. That further, said acts were undertaken by Respondent UNION for the benefit of Respondent AMERICAN and were also performed to advance the interests and benefit of Respondent UNION at the expense and detriment of Petitioner PFISTER who had taken the same precise trip that numerous other employees of Respondent AMERICAN and members of Respondent UNION had taken, with no travail to them,

but which was the source of PFISTER's wrongful discharge.

PFISTER stripped naked of all representation owed to her by Respondent UNION and otherwise misled and misguided by their acts of misrepresentation, fraud, non-disclosure, oppression, and the like , and further confronted with the false and damaging and willful misrepresentations made by Respondent AMERICAN that she was discharged for 'willful misconduct', which was invalidated by the California Unemployment Appeals Board which held that PFISTER's discharge was improper, was coerced to enter a settlement agreement which major terms were that Respondent AMERICAN would cease and desist from making any further false utterances concerning PFISTER's employment suitability and otherwise removing the false, disparaging and defamatory statements that PFISTER was terminated for misconduct. PFISTER specifically recites in her Complaint, contrary to the relevant Orders of the District Court and Court of Appeals, that said settlement agreement

was entered into because of the fraud and artiface practiced by Respondent UNION and Respondent AMERICAN, one with another. In no way could any of Respondent UNION's conduct or actions be regarded or construed as having "aided" or "assisted" PFISTER in the proper and lawful resolution of her grievance.

PFISTER because of the obstacles and impediments erected by Respondent AMERICAN was unable to seek re-employment with other airline carriers, and as she alleges in her Complaint, she did not discover the fraud and deceit carried out against her by Respondent AMERICAN, in combination and collusion with Respondent UNION, until she specifically 'tested' the purported settlement agreement she was fraudulently induced to execute. Petitioner complains that she could not in the exercise of due diligence have discovered the fraud and deceit because she did actively or seriously seek employment with other airline carriers until a period three (3) years from the commencement of the

within action." Further, that she had no way of knowing the true condition of the records and false and damaging information communicated by Respondent AMERICAN, notwithstanding the settlement agreement, which false communications included statements stating that Petitioner was "a personnel problem", was never employed by AMERICAN for the five (5) years she was, in fact, employed by them, was unsuitable for an airline position, was "dishonorable and dishonest" and could not be trusted for employment purposes and other such disparaging statements.

Petitioner further states that the acts aforementioned were outrageous, and unspeakable, continuing in duration, and committed from one year from the date of filing of the subject Complaint and "together with the causes of action therein, had been willfully concealed from plaintiff (petitioner) by defendants willful and intentional acts preventing their discovery until one (1) year from the filing of the

subject lawsuit. This was particularly harmful in light of the excellent performance and work record that Petitioner PFISTER enjoyed.

Petitioner did not learn that she had been 'blacklisted' with all other major carriers by the actions of Respondent AMERICAN and Respondent UNION, notwithstanding the subject settlement agreement, and further specifically complains that the fraud and deceit practiced by Respondents and, in particular, Defendant UNION, was not discovered by Petitioner until a date three (3) years before the commencement of the within action and Petitioner further stated that the Respondent AMERICAN obscured and frustrated the discovery of said fraud and deceit for both the benefit of Respondent AMERICAN and Respondent UNION and "was thwarted by defendant AMERICAN who willfully refused to permit plaintiff (petitioner) to examine and review her personnel file and employment history to ferret out any abuses or false or disparaging information contained therein." (See APPENDIX T)

PFISTER complains that she was specifically 'stonewalled' by Respondent AMERICAN respecting all her inquiries and that the actions of Respondent AMERICAN in refusing her access to her personnel file and other pertinent documents and information was intended to, and did constitute, a fraudulent concealment of facts and the causes of action which PFISTER has recited in her complaints on file herein.

The most dramatic evidence of this 'concealment' was best furnished by PFISTER herself at the time of Oral Hearing when, because the appellate court refused to grant her a continuance to be represented by counsel (after her retained legal counsel was blocked from representing her improperly), she was compulsed to represent her own cause. At the time of said hearing on November 4, 1982, Petitioner PFISTER was specifically asked by the appellate panel ... "WHEN AND AT WHAT TIME DID YOU ACTUALLY DISCOVER these causes of action?" Appellant, Petitioner

herein, testifying in response thereto, answered unequivocally ... "I discovered the causes of action in 1978." Under these facts and a review of the docket of this litigation which shows that the Petitioner filed her original complaint on November 1, 1978, it is unassailable that Petitioner's claims were not, and should not, be construed under any circumstance to be time-barred in view of the discovery date of the causes of action which was totally and completely proper and justified in light of the willful 'stonewall' of information and 'concealment' of the causes of action by Respondent AMERICAN, in combination with Respondent UNION, seeking to obscure and obsfucate their liability and misconduct.

PFISTER upon discovery of the causes of action forming the basis of the instant Complaint, forthwith and with the utmost of dispatch, prepared and filed the subject action on November 1, 1978 -- no more than a few months after she

learned of them.

DISTRICT COURT PROCEEDINGS:

PFISTER sought resort in the district court on November 1, 1978 pursuant to the diversity jurisdiction, 28 U.S.C. Sec. 1332 and again on February 14, 1979. These complaints were dismissed by the district court, sitting as the Honorable Warren Ferguson, because Petitioner was unable to secure complete diversity over all of the named defendants herein. Leave was granted Petitioner to file a second amended complaint which plaintiff/petitioner filed on June 12, 1979 which asserted jurisdiction pursuant to 28 U.S.C. Sections 1331 and 1337, and as well as the provisions of 29 U.S.C. Section 185. Notwithstanding that Sec. 1337 jurisdiction was invoked by Petitioner, i.e. "any act regulating commerce", the district court sitting as the Honorable Warren J. Ferguson having the matter come before the court

on Respondents' Motion to Dismiss for failure to adequatelyallege jurisdiction based upon a federal question, entered an Order on August 28, 1979 dismissing the Petitioner's second amended complaint with sixty (60) days leave to amend to plead under the Railway Labor Act in lieu of the Labor Management Relations Act. The District Court's Order indicated that the plaintiff could state causes of action against her union for breach of the duty of fair representation and against AMERICAN for inducement or otherwise participating in the breach. The court further cautioned plaintiff that any allegations of wrongful discharge were within the exclusive jurisdiction of the National Railroad Adjustment Board. The Order of the District Court made it clear that if Petitioner did amend under the Railway Labor Act that it would not countenance in Federal Court any claim for breach of the collective bargaining

agreement stemming from the wrongful and malicious discharge of Petitioner by Respondent AMERICAN notwithstanding the averments in PFISTER's second prayer that her ability to vindicate her claim for wrongful discharge had been illegally "compromised and impaired" by the Respondent UNION's conscious and willful breaches of its duties of fair representation instigated by Respondent AMERICAN and undertaken for the collective benefit of AMERICAN and UNION acting in conspiracy one with another.

PFISTER armed with the mandate of the U. S. Supreme Court in Vaca v. Sipes, 386 U.S. 171 (1966) and Glover v. St. Louis-S.F.R. Co., 393 U.S. 324 (1969) and Hines v. Motor Freight, Inc., 424 U.S. 554 (1976) whose force commanded that all of PFISTER's claims, including her claim for wrongful discharge, properly invoked the subject matter jurisdiction of the district court, and otherwise challenged the 'bifurcation'

concept implicit in the district court's Order, sought immediate recourse in the U. S. Court of Appeals for the Ninth Circuit on September 17, 1979. PFISTER's efforts were motivated by judicial economy and reduction of expenses to all litigants involved, since Respondents had made it clear that even if Petitioner were to amend her complaint to plead under the Railway Labor Act (notwithstanding that jurisdiction in the district court attached as a result of the UNION's breach of its duty of fair representation and AMERICAN's complicity in it sufficient for 28 U.S.C. Section 1337 jurisdiction), they would still challenge the subject matter jurisdiction in the district court. PFISTER invoked the processes of the appellate court to have them validate her assertion of jurisdiction. PFISTER

argued in her Appeal that a district court has sufficient primary jurisdiction over an employer and union in a single action to adjudicate all claims for relief, including wrongful discharge, where the arbitration process had been corrupted by the UNION's breach of its duty of fair representation in complicity with the Employer. Additionally, Petitioner PFISTER asked the Court of Appeals to exercise its curing powers under 28 U.S.C. Sec. 1653, inasmuch as all parties to the litigation understood that the Railway Labor Act was the governing statute respecting PFISTER and the Respondent Employer AMERICAN and Respondent UNION, and that the duty of fair representation exists with the same persuasiveness under 45 U.S.C. Sec. 181 as it does under 29 U.S.C. Sec. 185.

At no point in time from November 1, 1978 up and to March 26, 1981 did ANY of

Respondents ever seek to challenge the timeliness of Petitioner's claims, but simply challenged the subject matter jurisdiction of the district court to adjudicate her claim.

After PFISTER had fully briefed her Appeal, denominated as No: 79-3581, and had in all ways discharged her responsibilities to the appellate court with respect to perfecting the record on appeal, and after nine (9) months of having her appeal before the court, the Court of Appeals consisting of Circuit Judges Poole and Norris sua sponte dismissed the appeal for lack of jurisdiction. Again, on January 28, 1981, said Court of Appeals rebuffed Petitioner and denied her motion for reconsideration. The mandate of the Court of Appeals dismissing the aforereferenced appeal was not filed and spread in the district court until March 11, 1981. The Court of Appeals, by its actions therein, effectively abused

Petitioner's rights to have her questions answered and otherwise ducked the issues which were ripe for adjudication on appeal and sent the matter back to the district court. Interestingly, the U. S. Court of Appeals for the Eighth Circuit, in Raus v. Brotherhood Ry. Carmen of U.S. and Canada, 663 F.2d 791 (1981), was confronted with the same factual parameters as PFISTER had presented in her appeal -- No: 79-3581. Of greater moment, that presented with the same circumstances as PFISTER, the Court of Appeals "cured" the defect in jurisdiction which was alleged under 29 U.S.C. Sec. 185 and otherwise indicated that when a plaintiff (such as petitioner did) makes allegations of collusion in her complaint tying the employer and union together in denying the employee her rights under the collective bargaining contract and Railway Labor Act, she sufficiently invokes

the subject matter jurisdiction of the district court. That PFISTER was not accorded by Circuit Judges Norris and Poole the legal benefit and protections extended by the Raus court is a difference without any valid legal distinction. Further, it is highly suggestive of a mis-utilization of the judicial process, perhaps unwittingly, to spawn additional litigation expense, anguish and congestion in having a proper judicial response provided to Petitioner whose legal claims had already been substantially obsfucated by Respondents in the litigation process.

Prior to the mandate of the Court of Appeals being filed on March 11, 1981, Petitioner filed her third amended complaint (March 3, 1981) in the U. S. District Court. PFISTER's apprehensions regarding the challenge to her third amended complaint even though it was properly reaverred under the Railway Labor Act were not misplaced, for Respondents moved forthwith attacking the subject matter jurisdiction of

the district court, just as PFISTER apprised the Court of Appeals they would, notwithstanding her amendment. On April 20, 1981, the U. S. District Court, sitting as the Honorable Warren J. Ferguson who had been elevated more than six months previously to the U. S. Court of Appeals for the Ninth Circuit as a circuit judge, presided at a hearing on Respondents' Motion to Dismiss PFISTER's third amended complaint. During the course of the oral hearing the district court made it clear that he intended to have the cause proceed to trial and even made references to "piggy-backing damages at the time of trial." After Petitioner and Respondents had presented oral argument, the district court abruptly closed the proceedings and left the courtroom. Some time thereafter, an Order was entered by the Honorable Warren J. Ferguson reassigning the matter to be heard

by an alternate district court since he was of the opinion ... "that he should not try said case by reason of the fact that as a circuit judge he can no longer handle the case." There is no Order received by Petitioner indicating that Judge Ferguson did not anticipate the matter not proceeding to trial.

That on June 2, 1981 by Petitioner and Petitioner's counsel on their own initiative having learned by checking with the Clerk that a status conference on the aforementioned litigation was sua sponte set to be heard on June 1, 1981 by virtue of an Order dated purportedly May 28, 1981. That Petitioner contacted the Clerk on June 4, 1981 and was advised that the motions to dismiss which had been presented and argued before Judge Ferguson on April 20, 1981 were now mysteriously reinstated to be heard on June 8, 1981 by Manuel Real, U. S. District Judge.

That before the Motion and prior to any oral argument on said motion being made before the U. S. District Court Manuel Real, Petitioner and her counsel made preemptory challenge to Judge Real's participation in these proceedings pursuant to 28 U.S.C. Sec. 144 and California Code of Civil Procedure Sec. 170.6. The affidavit was served upon the judicial officer as well as respondents. Concurrently with the service of said document, the U. S. District Judge suspended the proceeding and continued it to the afternoon of June 8, 1981. At the time prior to commencement of proceedings that afternoon, Judge Real advised the parties that Malcolm M. Lucas, U. S. District Judge, had ruled on Petitioner's Application for Disqualification and had denied same (without oral hearing furnished Petitioner and without notice that Judge Lucas would be acting on said petition). Petitioner assigns this as significant inasmuch as Judge Lucas was adjudicating another litigation pending in the district

court where his judicial conduct had been questioned by Petitioner and Petitioner's counsel, thereby providing a basis for recusal of Judge Lucas to rule on Judge Real's Application for Disqualification. District Court Real refused to abide Petitioner's preemptory challenge, and for that matter, stated there was no preemptory challenge under the federal rules, nor did said district judge, despite Petitioner's request, stay the subject proceedings on the motions to dismiss to allow Petitioner an opportunity to pursue a writ with the court of appeals or this Court (Supreme Court) to furnish such additional information and facts so as to command his disqualification. After oral argument (none of which was advanced by respondents), Respondent Judge Real dismissed Petitioner's Third Amended Complaint on the basis that Petitioner failed to apply for leave to file her third amended

complaint; her action was barred by the applicable statute of limitations; plaintiff failed to state any facts sufficient to toll the applicable statute of limitations; and plaintiff's allegations failed to state a claim under federal law (which was handwritten). Petitioner's Third Amended Complaint was dismissed without leave to amend. JUDGMENT was entered on June 10, 1981 (APPENDIX A) and Petitioner filed her Notice of Appeal promptly on June 17, 1981 vesting jurisdiction in the U. S. Court of Appeals for the Ninth Circuit.

PROCEEDINGS IN THE U. S. COURT OF APPEALS FOR THE NINTH CIRCUIT (JUNE 17, 1981 THRU PRESENT TIME):

Commencing on June 17, 1981 Petitioner with the aid of her trial counsel, also representing her on appeal before the Ninth Circuit, conscientiously and responsively prosecuted the appeal from Respondent REAL's Order of

June 10, 1981 and in May 1982, almost one year later, her cause was fully briefed before the Ninth Circuit Court of Appeals by her undersigned counsel. In January 1982, prior to the brief being filed, Petitioner pursuant to the Federal Rules of Appellate Procedure, and Rule 10, moved to "cure the reporters transcripts for material deficiencies and misstatements contained therein". Said Motion to Cure was denied by the U. S. Court of Appeals. Many of the alterations occurring in the transcripts if properly cured would have demonstrated that the district court sitting as Warren J. Ferguson had every intention of having Petitioner's cause proceed to trial, and did not have any intention of granting Respondents' Motion to Dismiss Petitioner's third amended complaint.

During the same proceeding of the instant appeal from which this Petition follows (Appeal No: 81-5550), the U. S.

Court of Appeals Circuit Judges Norris and Wright willfully, and in furtherance of a conspiracy, prevented Petitioner's undersigned counsel from representing her before the U. S. Court of Appeals for the Ninth Circuit despite his outstanding reputation as a federal practitioner and appellate advocate. Shortly before her cause was set for oral argument in November 1982, Petitioner learned that her undersigned counsel would not be permitted to represent her at the time of oral argument. On October 25, 1982, in light of the facts discussed hereinabove and prior to the merits panel being appointed, Petitioner filed an Emergency Motion for Continuance allowing her to secure alternate legal counsel to argue her appeal on November 4, 1982 (see APPENDIX I). On October 28, 1982 Petitioner's Emergency Motion for Continuance was denied and Petitioner was informed that she had to proceed pro se or to submit on the briefs (see APPENDIX J). At the time

of oral argument on November 4, 1982 before Circuit Judges Hug, Boochever and Goodwin, Petitioner protested the fact that her attorney, the undersigned counsel, was prevented from representing her before the court, and her right of due process was grossly, adversely affected by the failure of the court to afford her a continuance to enable alternate legal counsel to urge her cause on appeal on oral argument and to otherwise provide her with a "meaningful hearing on the substance of her appeal."

Petitioner had also filed a Motion to Strike Appellees' Designation of Clerk's Record for Fraud and requested imposition of sanctions on appellees, respondents herein, for material misrepresentations and alterations of the Record on Appeal as constituted by the Clerk of the District Court. Said Motion more fully appears at APPENDIX K . Petitioner was further advised by ORDER of the Court that said Motion to Strike for Fraud would be referred to the Merits Panel,

i.e., Circuit Judge Hug, Boochever and Goodwin for their disposition at oral hearing on November 4, 1982. This more fully appears at APPENDIX L . At no time up to the present has any order been issued by any member of the panel or any member of the Ninth Circuit concerning Petitioner's Motion to Strike for Fraud committed by Respondents. Various papers sought to be filed pertinent to the fraud and Petitioner's cause on appeal were summarily rejected by the Clerk of the U. S. Court of Appeals.

At the time of oral hearing on November 4, 1982 Petitioner, appearing on her own behalf, as the result of the court's refusal to grant her a continuance to secure additional counsel, furnished testimony to the appellate panel in response to their questioning to her as to "when she actually discovered the causes of action"forming the basis of her Complaint and action. Petitioner unequivocally testified

in no uncertain way that she had not discovered the wrongs and had been otherwise frustrated from doing so until sometime in 1978 and initiated her Complaint immediately thereafter in the same calendar year, 1978. These facts can be corroborated by other third parties who were percipient to the oral hearing held on November 4, 1982 held at the U. S. Court of Appeals. That said oral hearing was duly recorded by tape recorder on November 4, 1982.

On January 5, 1983 the aforestated panel of the court of appeals entered an order affirming Respondent REAL's dismissal of PFISTER's actions, as more fully appears at APPENDIX C. PFISTER perfected and filed a timely petition for rehearing and suggestion for rehearing, en banc, and stayed the Order and mandate in the appeal automatically. On May 16, 1983, the aforementioned circuit panel denied

rehearing and also denied suggestion for rehearing, en banc. Petitioner sought timely Stay of the court's mandate after Rehearing was rejected and the said Petition for Stay of Mandate was GRANTED initially by Circuit Judge Proctor Hug, Jr., up to and including the 16th day of June 1983. The Mandate was further stayed pursuant to the Application of Petitioner by the full appellate panel consisting of Circuit Judges, Hug, Boochever and Goodwin, and said mandate has been ordered stayed up and to July 30, 1983. (Said Orders appear at APPENDIX E and F respectively.)

At the time of oral hearing on November 5, 1982, Petitioner testified as to matters within her knowledge concerning the actions of the Respondent UNION and Respondent AMERICAN occurring in New York City, New York, when she was flown back by Respondents to review "her grievance" which had been filed before the Systems Board of Adjustment, but never prosecuted by the UNION nor adjudicated by the Board. She stated how in no uncertain

way she had been distraught and suffered enormous mental and emotional anguish after the UNION sought to have her "quit her employment" and informed her that they would not press her grievance before the Systems Board, even though docketed by them, and that they would furnish her no financial, legal or moral support, and did not furnish Petitioner with any reasons why "they were pulling out" all representation of her. Petitioner further advised the appellate panel that the UNION never apprised her of her rights under collective bargaining contract or under the appropriate federal statutes.

After the U. S. Court of Appeals denied Petitioner's Rehearing and Suggestion for Rehearing, en banc, and before any mandate had issued (it should be pointed out that no mandate has issued in this case), PFISTER directed a letter to the Clerk requesting the transcripts of the oral hearing held on November 4, 1982. Said request appears at

APPENDIX M and is dated May 22, 1983. That on June 7, 1983 the Clerk of said U. S. Court of Appeals in San Francisco informed Petitioner that she should secure the tapes of the proceedings by contacting the Clerk, U. S. Court of Appeals Office in Los Angeles (as more fully appears at APPENDIX N). On June 9, 1983 Petitioner abiding the Clerk's instructions went directly in person to the U. S. Court of Appeals for the Ninth Circuit and spoke to Deborah Mayfield and Winifred Taylor, Sr. Deputy Clerk. A letter was furnished to Petitioner by Deputy Clerk Mayfield after she had contacted the judges concerning the tapes, as more fully appears at APPENDIX O. On June 17, 1983 Petitioner not having received any response from Ms. Mayfield directed an additional letter appearing as APPENDIX P. On June 20, 1983 the Clerk's Office by Winifred D. Taylor, advised Petitioner that the tapes had been "erased". Petitioner's counsel who had been prevented from representing her at

the time of oral argument was also advised by letter dated June 15, 1983 that the tapes had been erased, as more fully appears at APPENDIX Q&R. Petitioner respectfully states that these tapes were in existence according to Patrick Fisher and Deborah Mayfield as late as June 9, 1983 when Petitioner and her counsel personally appeared at the Clerk's office at the courthouse. Further no mandate had ever been issued in this matter. Therefore, the subject tapes were destroyed sometime AFTER June 9, 1983 while they were under the sole, exclusive control of Winifred D. Taylor, Sr. Deputy Clerk for the U. S. Court of Appeals in Los Angeles, California. PFISTER outraged at this revelation and shocked by it directed a letter to Winifred D. Taylor, Custodian of said tapes, having sole control and dominion over said tapes, indicating that the "erasing of evidence" and her tapes constituted a serious offense and outside of the scope of the legal process (see APPENDIX S).

Petitioner now invokes this Court's powers of review pursuant to its certiorari authority and its supervisory powers contained in 28 U.S.C. Sec. 1651 to cause a full judicial review of the orders of the District Court and Court of Appeals hereinabove referenced and to otherwise prohibit and oversight the gross and egregious improprieties, procedural and otherwise, which have irreparably detrimented Petitioner's rights to a fair trial guaranteed by the U. S. Constitution, and more specifically, the Fifth Amendment thereunder. Accordingly, this Petition for Writ of Certiorari and/or Writs of Mandamus, Prohibition or the like is prayed and is now properly before the United States Supreme Court.

REASONS FOR GRANTING WRIT

I.

PETITIONER SUFFICIENTLY INVOKED FEDERAL QUESTION JURISDICTION OF THE DISTRICT COURT UNDER THE RAILWAY LABOR ACT WHERE SHE SUED HER EMPLOYER AND UNION IN A SINGLE ACTION SEEKING TO ADJUDICATE ALL CLAIMS INCLUDING WRONGFUL DISCHARGE WHERE THE ARBITRAL PROCEDURES THROUGH WHICH SHE WAS TO VINDICATE HER GRIEVANCE WERE FLAWED BY THE UNION'S BREACH OF ITS DUTY OF FAIR REPRESENTATION SOLICITED BY HER EMPLOYER.

Petitioner is before this Court by virtue of her writs of certiorari and writs seeking extraordinary relief to cure and correct orders of the District Court which have been judicially sanctified by the U. S. Court of Appeals for the Ninth Circuit. Petitioner PFISTER summons this Court's assistance to have its mandates promulgated in Vaca v. Sipes, supra, and Glover v. St. Louis-S.F.R. Co., supra, and Hines v. Motor Freight, Inc., supra, respected by the U. S. Court of Appeals for the Ninth Circuit because the subject orders of the District Court (APPENDIX A) and the orders

of the U. S. Court of Appeals (APPENDIX C and D) affirming, violate the letter and spirit of this Court's mandates as enunciated in Vaca, Glover and Hines hereinabove cited. Further, said Order of the Court of Appeals violates the numerous authority in the Ninth Circuit itself holding that a district court has sufficient primary jurisdiction whenever an employee, such as PFISTER, is seeking damages for wrongful discharge and has alleged that the UNION has breached its duty of fair representation to her, thereby frustrating the vindication of her cause before the Board. Further, PFISTER in light of the allegations in her Complaint is under no compunction to exhaust any of her remedies under the terms of the collective bargaining agreement or provisions of the RLA. (See Margetta vs. Pam Pam, 501 F.2d 179 (9th Cir. 1974); Price vs. So. Pacific Transp. Co., 586 F.2d 750 (9th Cir. 1978).

In short, PFISTER is seeking this Court's intervention because the Ninth Circuit Court of Appeals has not accorded deference to this Court's mandate as cited in Vaca, Glover and Hines, but also has acted in a manner totally anathema to its own mandates in Pam Pam, and Price. Of further interest, is a Ninth Circuit case captioned Franklin v. So. Pacific Transport Co., 593 F.2d 899 (1979) which extrapolated this Court's Glover mandate holding that under the Railway Labor Act ... "an aggrieved employee has the right to bypass the adjustment board and bring a wrongful discharge action in the district court when his union (such as PFISTER's union) is guilty of a breach of the duty of fair representation."

The judicial topography in each of the ten circuits shows almost a universal consensus that PFISTER's claims for wrongful discharge, as well as the breach of the duty of fair representation would all be cognizable in

the district court notwithstanding PFISTER's failure to "exhaust" her remedies before the Systems Board of Adjustment. (See Schum v. So. Buffalo Ry., 496 F.2d 328 (2nd Cir. 1974); Raus v. Brotherhood Ry. Carmen of U.S. and Canada, 663 F.2d 791 (8th Cir. 1981); and Richins v. Southern Pacific Co., 620 F.2d 761 (10th Cir. 1980).

The vitality of PFISTER was grossly misperceived by both the district court and court of appeals inasmuch as PFISTER has alleged in her Complaint that she was frustrated in her attempts and otherwise directly thwarted because of the numerous violations, intentional and willful in nature, committed by Respondent UNION in its discharge of its fiduciary duty to represent PFISTER's interest as reasonable prudent men, free from discrimination and oppressiveness. The factual contours of PFISTER's Complaint leaves little doubt that Respondent UNION was acting in fraud and

collusion with Respondent Employer to obstruct PFISTER's plight to cure her wrongful discharge and specifically breached its duty of fair representation by abandoning PFISTER's grievance after it had been docketed with the Board, by seeking to force her to resign, by withdrawing and severing all financial, legal and emotional support, by misinforming and misrepresenting the nature of PFISTER's rights under the contract and RLA, and by further willfully failing to make disclosures material in nature to PFISTER regarding the various avenues of redress available to her under the contract and RLA and otherwise acting in a manner intending to conceal facts and causes of action growing therefrom.

PFISTER who sought to have the Ninth Circuit Court of Appeals act back in 1979 to have the district court comply with the mandates of this Court and its own mandate, as well as those in other circuits--all of which fortify federal jurisdiction over PFISTER's claims--was rudely

rebuffed by that court after her cause was fully briefed and after the Ninth Circuit was apprised that gross departures from the mandate of this Court were occurring respecting, in particular, the bifurcation of PFISTER's claim between the Systems Board of Adjustment and federal district court. Indeed, PFISTER beseeched the Ninth Circuit to correct the district court's erroneous assumption that the RLA presented a legal compunction to PFISTER to have her cause adjudicated initially by the National Railroad Adjustment Board (the Systems Board of Adjustment in the instant case). As history unfortunately repeats itself, so, too, does judicial obtuseness. As PFISTER's appeal was dismissed sua sponte in October 1979 by the Ninth Circuit who failed to give deference to this Court's mandates regarding complete jurisdiction over PFISTER-type hybrid claims in the district court, so, too, did the U. S. Court of Appeals for the Ninth Circuit affirm

APPENDIX C and D the Orders of the District Court (APPENDIX A) dismissing PFISTER's prayer for failure to state a federal claim because she did not sufficiently invoke federal question jurisdiction.

Such aberrant decision-making, in addition to protracting PFISTER's day in court, substantially diminishes the judicial process as a whole. That PFISTER was consciously connived out of her rights under the collective bargaining agreement and RLA by Respondent UNION, together with the complicitous employer is cause enough for judicial concern. However, when the district court with the apparent blessing of the court of appeals on two separate occasions tells PFISTER that she is not welcome in the U. S. District Court, their misguided discretion elevates to gross judicial malfeasance and misfeasance requiring this Court to act forthwith by issuing an appropriate writ of certiorari, or in the alternative, a writ of prohibition, mandamus, or the like restoring PFISTER's

Complaint and each and every cause of action asserted therein.

In a recent case determined in March 1980 by Sr. District Judge Garrity, the same real party-in-interest respondents -- Employer AMERICAN and UNION, TWU of America -- were before the court seeking to impose the same judicial sophistry that seemed to be persuasive to Respondent REAL and Respondent U. S. Court of Appeals for the Ninth Circuit. Fortunately, the scrutiny brought to the litigation by Judge Garrity was able to pierce a sophistry that obviously placed its spell on both the district court and court of appeals who issued the judgments and orders which form the basis for this petition now pending before the Court. (See Hennebury v. Transport Workers Union of America, Local 507 and AMERICAN AIRLINES, 485 F.Supp. 1319 (1980).

In Schum v. Buffalo Ry. Co., supra, the U. S. Court of Appeals for the Second Circuit

perceptively describes the duties that grieving employees such as PFISTER expect from their collective bargaining representative. As the court stated:

> "Schum was seeking to protect one of his most basic rights in the employee-employer relationship--the right not to be wrongfully discharged. As a general rule, grievances do not succeed without the full support of of the union. Normally employees do not have the expertise, knowledge or experience to interpret the complicated substantive and procedural provisions of a collective bargaining agreement. In addition, specialized skill and insight are required at the higher levels of the grievance procedures to investigate and marshall the relevant facts and law, to prepare adequate petitions and briefs, to comply with the intricate limitations periods common to all labor contracts, and to present persuasive arguments to the board of arbitration."

The Schum court went on to promulgate a rule which obtains to PFISTER and was grossly ignored by the Ninth Circuit. Phrased simply, the Schum proposition is that an employer cannot erect a defense of non-exhaustion to

bar an employee's claim for wrongful discharge if that employee, such as PFISTER, has reasonably relied upon the union and to exercise its duty of fair representation to her. The court further finds support in the Ninth Circuit decision of Retana v. Apartment, Motel, Hotel & El. Op. U., Loc. No. 14, 453 F.2d 1018 (1972). Retana holds that the plaintiff's right to initiate her claim even though personal to her was not a bar to her maintaining a suit against her employer and further stated that non-exhaustion was excused by the union's failure to act "without rational justification" and by the union's "failure to advise her of her contract rights." id. at 1027.

When the subject Orders of the district court and court of appeals affirming are tested against the mandates of this Court and each of the authorities presented by Petitioner herein, the conclusion is irresistible that the subject

Orders are infirmed and offend the mandates of this Court requiring that they be immediately vacated, and that Petitioner's action be reinstated in the district court with a full command issuing that said district court oblige the mandates respecting federal jurisdiction which form the basis of this Court's holdings in Vaca, Glover, Hines and the like.

II.

ABSENT AN EXPRESS LIMITATION OF ACTION PROVISION CONTAINED IN THE FEDERAL STATUTE SUED UNDER, THE DISTRICT COURT WAS OBLIGED TO APPLY CALIFORNIA CODE OF CIVIL PROCEDURE SEC. 338(4) CONCERNING AN ACTION BASED UPON FRAUD TO PFISTER'S COMPLAINT WITH SPECIAL ATTENTION GIVEN TO THE DISCOVERY OF THE FRAUD AS ALLEGED BY PFISTER AND THE CONCEALMENT OF SAID CAUSES OF ACTION FROM HER OR IN THE ALTERNATIVE TO APPLY CPLR OF NEW YORK, SEC. 213(1) AND (8) CONCERNING ACTIONS BASED UPON CONTRACT OR FRAUD.

For the better part of three years, none of Respondents raised any timeliness challenge to PFISTER's Complaint, but sought to invalidate her action on the basis that it did not state a federal claim. After the court of appeals sua sponte dismissed her earlier appeal in October 1980, directing Petitioner to file a third amended complaint in district court, Respondents were given a new breath of life and sought to, in March 1981, block PFISTER's claims on the basis that they were barred by the applicable statute of limitations. Of great interest is that neither the federal statute sued under by PFISTER, i.e., the Railway Labor Act, nor the Respondents indicated what the appropriate statute of limitations would be.

This Court's holding in Auto Workers v. Hoosier Cardinal Corp., 383 U.S. 696, 86 S.Ct. 1107 makes it clear beyond cavil that in the absence of a federal statute of limitations provision, a district court, as a matter of federal law, may borrow an appropriate state statute of limitation and making a determination of which state statute of limitation period is most appropriate depending on the nature of the federal claim and federal policy involved. Of equivalent dignity is this Court's admonition in its decision of Occidental Life Insurance Co. v. EEOC, 432 U.S. 355, 97 S.Ct. 2247 wherein the Court stated:

> "The Court has not mechanically applied a state statute of limitations simply because a limitations period is absent from the federal statute. State legislatures do not devise their limitations periods with national interests in mind, and it is the duty of the federal courts to assure that the importation of state law will not frustrate or interfere with the implementation of national policies...State limitations periods will not be borrowed if their application would be inconsist with the underlying policies of the federal statute."

Thus, PFISTER presents two questions to this Court: 1) Is the federal policy undergirding the Railway Labor Act frustrated by the application of a state statute of limitations to PFISTER's claims; and 2) Did the district court in its selection and application of its state statute of limitations actively frustrate PFISTER's rights to be protected under the appropriate federal statutes?

PFISTER argues that the borrowing of state statutes in governing her claims for relief against respondents is not per se offensive, but does vigorously attack the particular statutes that have been borrowed and the patently unreasonable manner in which the district court and court of appeals apply them to the contours of her litigation. The grist of Petitioner's prayer is that she was defrauded by her union and employer in having executed a sham settlement agreement which extinguished her claim before the Board prior to any adjudication and whereby she otherwise

was forced to waive and surrender important federal rights under the collective bargaining agreement and appropriate governing federal statutes. PFISTER goes on to complain that but for the UNION's breach of the duty of fair representation consisting of the UNION's abandonment after the docketing of her grievance with the Board by their failure to apprise her of valuable rights under the contract, by their attempts to force her to resign and by their otherwise actions not in the exclusive best interest of PFISTER, she would never had entered into the sham, bogus settlement agreement in November 1972. Further, PFISTER has made sufficient allegations in her Complaint (APPENDIX T) indicating that she was unable to discover the fraud and that Respondents in combination and collusion one with another concealed her personnel file from her and denied her access to same. Assuming arguendo that the district court was correct in applying California law (which PFISTER does not assent to), PFISTER's claim would still

be timely under Sec. 338(4). In short, this provision compulses PFISTER to bring her action within three (3) years after she discovered the facts constituting the fraud. No cause of action comes into existence until discovery. Under this set of conditions, PFISTER's claims were all efficacious and not time-barred because as she indicated at the time of oral hearing on November 4, 1982 in response to direct questioning from the Panel, she did not discover her causes of action until 1978, the same year the Complaint was initiated in the district court. PFISTER asserts that the obsessive attempts of the district court and court of appeals to bar her claim (it should be noted that the district court made no determination as to what statute was applicable) were a gross abuse of discretion inasmuch as they ignored the substantial allegations of fraud made by PFISTER throughout her Complaint. In the alternative Petitioner also states that the subject Orders offend the mandate of the Second Circuit in the case of Abrams v. Carrier Corp., 434 F.2d 1234 (1970) wherein the court applied

New York's six-year limitation period for an action based upon a contractual obligation or liability express or implied to the employee's action against his employer for breach of the collective bargaining agreement. At this juncture, the Court is redirected to the salient facts in PFISTER's Complaint wherein she states that she was forced under duress, coersion, trickery and the like to enter a settlement agreement in November 1972. She commenced suit on the basis of said settlement agreement whose terms were controlled by Respondent UNION and Employer both domiciled in New York City. It would appear that the district court committed egregious reversible error by not making a determination as to which state statute of limitations applies to PFISTER's claims. Under either computation, California's statute of limitations for fraud or New York's statute of limitations for contract or fraud, PFISTER's prayer is in all ways timely. Alternatively, Petitioner seeks this Court's supervisory writs

because of its recent holdings in United Parcel Service, Inc. v. Mitchell,101 S.Ct. 1559 (1981). The wide variances of state borrowing respecting the hybrid-types of claims as embodied by PFISTER requires immediate intervention by this Court for purposes of clarification and uniformity and to ensure that federal policies of the Act are being effectuated, not obliterated, as PFISTER's claim has been. Petitioner further prays that the Order of the district court is infirmed for its failure to apply any specific statute of limitations to her claims and the orders of the court of appeals are similarly flawed because they improperly apply and interpret state statute of limitations in a manner which bars PFISTER federal relief for her claims properly cognizable in the district court.

III

THE GROSS IRREGULARITIES COMMITTED BY THE DISTRICT COURT AND COURT OF APPEALS IN THE CONDUCT OF PETITIONER'S LITIGATION INCLUDING THE WILLFUL DESTRUCTION OF TAPE TRANSCRIPTS OF HER ORAL HEARING AND HER DENIAL TO HAVE A CONTINUANCE FOR PURPOSE OF SECURING LEGAL COUNSEL AFTER HER COUNSEL WAS IMPROPERLY PREVENTED FROM ADVOCATING HER CAUSE CONSTITUTES A GROSS DEPARTURE FROM ACCEPTABLE JUDICIAL PROCEDURE REQUIRING THIS COURT'S INTERVENTION.

PFISTER hereinabove has urged this Court to reverse and vacate Orders of the district court and court of appeals because of the substantive deficiencies of the subject orders on the merits Petitioner presents. Assuming arguendo that none of the above were persuasive to this Court, PFISTER is summoning assistance to have this Court exercise its supervisory writs as well as its conventional certiorari authorities to review and oversight and cure the egregious, procedural abnormalities that have been visited upon her by the actions of the district court, Respondent REAL herein, and by the U. S. Court of Appeals for the Ninth Circuit.

PFISTER argues that as set forth fully in her Statement of the Case she has been substantially and adversely affected by the Orders of Malcolm M. Lucas and Manuel Real in failing to grant her application to disqualify the district court, Respondent REAL, who was

slipped onto her cause in a very brusque and unorthodox manner and who purportedly without any notice being furnished to Petitioner held a status conference on PFISTER's subject litigation. Not only did Petitioner believe that the U. S. District Judge Warren J. Ferguson who had handled the subject litigation from the onset in 1978 to April 1981 intend to have the subject litigation proceed to trial on the merits, but Petitioner was also under the belief that the aforementioned district court had denied Respondents, Real-Parties-In-Interest, Motion to Dismiss her Third Amended. But for PFISTER's own diligence and that of her counsel, she would never had learned of any status conference, nor for that matter, any hearing on the motions to dismiss which had already been disposed of by Judge Ferguson.

Disconcerted by the lack of notice furnished by Respondent District Court REAL (there being none), PFISTER upon learning of the assignment of her cause to REAL and prior to any appearance before him sought his immediate recusal. While this challenge would have been unquestionably efficacious under the State of California Code of Civil Procedure Sec. 170.6, Malcolm M. Lucas, Judge of District Court, to whom Respondent REAL transmitted Petitioner's application reckoned that PFISTER's preemptory challenge was insufficient.

Unfortunately, the district court after PFISTER's preemptory challenge abruptly and without any reasons advanced in the form of a memorandum or opinion ordered that PFISTER's complaint be forthwith dismissed.

PFISTER also requests this Court's intervention to investigate, supervise, and otherwise cure actions of the court of appeals respecting its failure to accord PFISTER's testimony at the time of oral hearing any deference, particularly her

testimony concerning when she discovered the causes of action forming the basis of her Complaint and other evidence of gross UNION misconduct in the discharge of its duty of fair representation in having improperly handled PFISTER's grievance.

To further compound this injury, Petitioner was also denied the right to have her legal counsel to represent her before the U. S. Court of Appeals for the Ninth Circuit. As significantly, PFISTER was denied the right to a short continuance to secure additional counsel to advocate her cause on appeal.

All of this, together with the other aforementioned procedural irregularities summates to a gross departure from accepted judicial proceedings as to require this Court's immediate intervention.

CONCLUSION

For all of the foregoing reasons, Petitioner respectfully prays this Court issue Writs of Certiorari to the U. S. Court of Appeals for the Ninth Circuit directing them to vacate the subject Orders entered January 5, 1983 and May 16, 1983 affirming the

dismissal of Petitioner's Third Amended Complaint. Petitioner further and alternatively prays that writs of prohibition, mandamus, and the like, or one or more of said writs as this Court deems proper issue to the U. S. District Court for the Central District of California, sitting as Respondent MANUEL REAL to vacate its Orders of Dismissal filed June 10, 1981, and to otherwise have Petitioner's cause reassigned to a successor district court free from any bias or prejudice against PFISTER or in favor of any Respondent herein with further instructions that PFISTER's Third Amended Complaint be reinstated in each and every cause of action, and that the cause be litigated before a trial by jury as demanded by Petitioner in her Complaint.

Petitioner further prays that this Court issue Writs of Mandamus, Prohibition, or the Like to the U. S. Court of Appeals for the Ninth Circuit commanding said circuit to cause a full and complete investigation into the facts and circumstances

surrounding the destruction of the tapes of oral proceedings held before the court on November 4, 1982, and the orders of the Court of Appeals preventing PFISTER from being represented by her undersigned counsel-of-record at the time of oral hearing; and for such further and additional relief, including attorneys fees, expenses, costs and the like as this Court deems necessary and proper in light of these circumstances.

DATED: July 29, 1983

Respectfully submitted:

BY: _____
EUGENE J. CARELLA, ESQ.

Counsel for Petitioner
PAULA E. PFISTER

P. O. Box 67292
Century City Sta.
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213/553-3721

CERTIFICATE OF COUNSEL

I, Eugene J. Carella, Esq., counsel for above-named petitioner and member in good standing of this court, do hereby certify that the within Petition for Writ of Certiorari and/or Petition for Writs of Mandamus, Prohibition or the Like directed to the U. S. District Court for the Central District of California and U. S. Court of Appeals for the Ninth Circuit designated herein is presented in good faith to fully ensure and protect the cause and rights of Petitioner, and not filed for purpose of delay.

EUGENE J. CARELLA, ESQ.

P. O. Box 67292
Century City Sta.
Los Angeles, CA 90067-0292

v.

CERTIFICATE OF SERVICE

I, Eugene J. Carella, Esq., do hereby certify that on this the_____day of August 1983 I duly served a true copy of the within document seeking a petition for writ of certiorari or in the alternative writs of prohibition, mandamus, and the like, on all parties of record and all respondents named herein as follows:

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Manuel Real, Judge
U. S. District Court
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Los Angeles, CA 90012

Judges, U. S. Court of Appeals
for the Ninth Circuit
7th & Mission St., Box 547
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EUGENE J. CARELLA, ESQ.